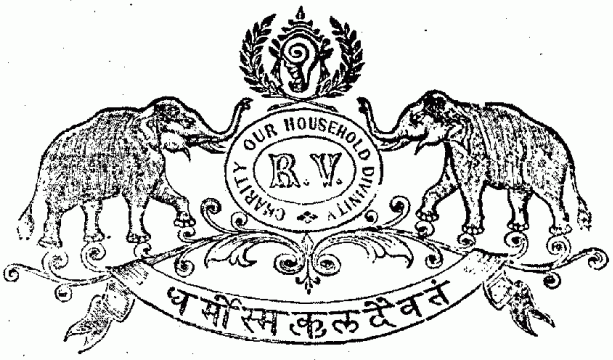
TRAVANCORE GOVERNMENT GAZETTE, SUPPLEMENT.

TUESDAY, 5th October 1897.



Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 3 P. M. on Saturday the 25th September 1897. / 11th Kanni 1073.

PRESENT.

The Dewan ... ... *Presiding.*

M. R. Ry. K. Krishnaswamy Rao Avergal, Dewan Bahadur., F. M. U.

M. R. Ry. P. Thanu Pillai Avergal, M. A.

Mr. I. H. Prince.

M. R. Ry. K. P. Sankara Menon Avergal, B. A., B. L.

M. R. Ry. E. Ramier Avergal.

Secretary.—I beg to announce that the Epidemic Diseases Bill, passed by the Council on the 11th September 1897, received the Royal assent on the 18th Idem and has become law as Regulation II of 1073—coming into force at once.

WILLS BILL.

Section 5.

Mr. Krishnaswamy Rao.—Before moving the amendments to section 5 of which I have given notice, I think it necessary to make a brief statement of the important amendments made by the Council in Committee. The power of a Hindu to make a testamentary disposition, which was confined by the Select Committee to self-acquired property was extended to *separate* property other than what the testator, if Makkathayee, may have received on partition of ancestral paternal property with his own direct lineal descendants in the male line up to the great-grandson. A large addition was made to the list of heirs as against whom the power should not be exercised except as regards one-half of the property. It brought within the category of favoured heirs, in the case of a Makkathayam Hindu testator, his daughters and their children, and *undivided brothers* competent to inherit in the case of intestacy; and, in the case of Marumakkathayees, mother, mother's brothers and sisters, and the children of the latter and also, where the person making the will happened to be a female, her own children. Separate provision was made for the case of a Makkathayam Hindu testatrix, giving her the power of willing away her Streedhanum property with the qualification that, as against her own children and their descendants up to the great-grandchild, her bequest should not take effect as regards one-half of such property. As none of these provisions applied to Numboories, Potties and others who are not wholly governed either by the ordinary Makkathayam Hindu law or by Marumakkathayam law, a separate section was enacted conferring on the *males* testamentary power over their self-acquired and separate property subject to the limitation that, as against their *co-parceners*, the bequest should be inoperative, if it covered more than one-half of such property. It was considered unsafe, in the absence of sufficient materials, to legislate as to the testamentary power of a woman belonging to these classes.

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By an extension of the meaning of the word 'maintenance', a will made by a Makkathayam Hindu is rendered ineffective in so far as it may affect the right of his unmarried female descendants to receive, from the property bequeathed, the expenses of their marriage. To remove doubts and to check frivolous objections and unnecessary litigation, it was provided that the Mahomedans who follow the Marumakkathayam law should have the same testamentary power as Marumakkathayam Hindus; that *specific* bequests were valid if the value of the property bequeathed did not exceed the limit prescribed; and that the valuation made by the testator should be accepted as correct unless it is shown to be inaccurate to the extent of 25 per cent. Considering the fluctuations in the value of landed property, of precious metals and stones and even of Government securities, a margin of 25 per cent was considered to be necessary to prevent unnecessary disputes.

As an alternative to the registration or deposit of a will, probate is allowed. In other words, no will shall take effect unless it is registered, deposited, or proved in a Probate Court. It is believed that the cheapness of registration or deposit will be preferred by the natives to the comparatively heavy cost of obtaining a probate. An exception to the rule, that a registered or deposited will must be revoked only by a registered document, was made in favour of persons who may revoke their wills in places beyond India. In the case of a will made by any person other than a Hindu or Mahomedan or Parsee, it is provided that the marriage of the testator operates as a revocation unless it is made in the exercise of a power of appointment.

The limitations imposed on the testamentary powers of Hindu subjects of this State were extended to the bequest of immovable property situated in Travancore by alien Hindus who, under their *personal* law as hitherto administered to them, have full testamentary powers.

The other amendments made were merely verbal and require no special mention.

I now beg to move my amendment to section 5, viz.—In clause (*a*), insert the words 'wife, father, mother' after the word 'children' in the 2nd line and the 5th line, omit the word 'or' before 'great-grandson' and add the words 'or father' at the end of the para.

As the Council in Committee included "undivided brother" among the favoured class of heirs of a Makkathayam Hindu, I think that heirs nearer than he, viz.—his wife, father and mother, in the absence of whom, the brother inherits self-acquired or separate property, should not, logically speaking, be ignored.

Mr. Ramier.—I second the motion.

Carried.

Mr. Ramier.—My first amendment is this:—Substitute 'and' for 'or' after the word 'death' in line 8, clause (*a*)—The extent of the power of alienation intended to be given is one-half of both self-acquired and separate property and not one-half of either of them. Therefore, the proper word is 'and' and not 'or.'

Seconded by Mr. Krishnaswamy Rao.

Carried.

Mr. Ramier.—My next amendment is to omit the Explantion to clause (*a*).

The main section itself is clear enough. In my opinion, the Explanation is more misleading than elucidative. If the Explanation is to be retained, it is necessary, I think, to add the words "if he has at the time of his death, children, or father, or undivided brother, or wife or mother" at the end of the Explanation. I would therefore omit the Explanation.

Mr. Krishnaswamy Rao.—Yes. The wording of the section is, I think, sufficiently clear; and the retention of the Explanation is not necessary. I second the motion.

Carried.

Mr. Ramier.—I beg to move that the following be added as an Explanation to clause (*a*) :—

'*Explanation.*—The restriction contained in this clause in favour of the wife or mother shall not affect the right of the testator to dispose of by will the reversionary right over such property after the death of the wife or mother.'

I think, as a result of the amendment that was proposed by Mr. Krishnaswamy Rao and carried already to restrict the alienation by will in favour of wife and mother

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also, that the Explanation that I now propose may be added with a view to make the meaning clearer. It is an undoubted law that wife and mother take only a life-interest in the property inherited, the reversonary interest always remaining intact; and I believe it is not intended to restrict the power of the testator in dealing with that reversionary right when he has got his wife or mother living at the time of his death. It may probably be said that the words 'as against wife, mother' in the section itself might convey the idea intended by the Explanation proposed. But, as the idea of a reversionary right apart from the possessory right is technical, I think the Explanation, even if considered superfluous, may be advantageously added.

Seconded by Mr. Thanu Pillai.

After some discussion, the Council being of opinion that the object intended by the proposed Explanation is secured by the words, 'as against wife, mother,' in the main clause, the amendment was withdrawn.

Clause (b).

Mr. Ramier.—I have an amendment in clause (*b*) also, viz.,—omit 'Sreedhanum' in line 6.

This clause being governed by section 3, the word 'Sreedhanum' is unnecessary, if not misleading, as likely to exclude certain items of her property intended to be brought in.

Seconded by Mr. Krishnaswamy Rao. He observed that, as the word 'Sreedhanum' is differently interpreted and as the general section (3) confers the power of making a will in respect of the property completely under the control of the testatrix, the omission proposed would remove all causes of ambiguity without defeating the object of the section.

Carried.

Section 6.

Mr. Ramier.—I beg to move that the word 'and' be substituted for the word 'or' in the 5th line of section 6. The reason for this amendment is the same as already stated in reference to clause (*a*) of the previous section.

Seconded by Mr. Thanu Pillai.

Carried.

Mr. Ramier.—I would also propose that the following words be added after the word 'children' in line 6 of the Explanation:—"the children of her daughter and of daughter's daughter." In the case of a testatrix, the restriction must, I think, be extended in favour of the children of her daughter and those of her daughter's daughter also.

Seconded by Mr. Thanu Pillai.

Carried.

Section 7.

Mr. Thanu Pillai.—I beg to move that the words 'in the Illum' be omitted and that the word 'and' be substituted for 'or' in line 6.

The term 'Illum' strictly applies only to one or two of the classes indicated and may therefore be misleading as it stands in the section. The words 'co-parcener or co-parceners' are, I think, sufficiently definite. The other amendment has already been practically accepted by the Council.

Seconded by Mr. Ramier.

Carried.

Sections 8 and 9.

Mr. Prince.—For reasons already explained, I move that the word 'and' be substituted for 'or' in line 4 of section 8 and in line 7 of section 9.

Seconded by Mr. Thanu Pillai.

Carried.

Mr. Ramier.—I beg to move that the following be added as a new section after section 8:—"No person following the Mahomedan law of inheritance shall be competent to dispose of by will except to the extent, and in favour of persons, allowed by that law."

I think, it is by oversight, that this provision is not included in the Bill as settled by the Council in Committee. There was a similar provision in the Select Committee's Bill.

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Seconded by Mr. Prince.

Carried.

Sections 17 and 18.

Mr. Ramier.—I would next take sections 17 and 18 together.

"In section 17, omit the words 'or deposited' in line 1; in line 3, insert the words 'under the last preceding section or' between 'than' and 'by;' and in the same line, the words 'duly registered' after the word 'writing'; and omit the words 'and executed in the manner.....be executed' after the word 'same' in line 5.

In section 18, substitute 'No' for 'A' in line 1; in line 2, omit the words 'considered to have been'; insert between the words 'revoked' and 'by' in the same line, the words 'otherwise than under the last preceding section or'; and in the last line, add the words 'or by a writing duly registered after the words' 'I of 1070.'

Make the two sections so modified, two clauses—(*a*) and (*b*)—of one section and make the proviso in section 17 common to both the clauses."

I think the object of this amendment will be self-evident. It was decided at the Council in Committee that a will once registered or deposited must be liable to be revoked only by a writing duly registered except when such writing is made out of India or, in the case of a deposited will, by its withdrawal. Sections 17 and 18 of the Bill do not fully convey the above idea; and so the amendment proposed is simply to supply the defect in the wording.

Seconded by Mr. Thanu Pillai.

Mr. Prince.—I would propose an amendment to the amendments now moved, viz.—Add the words 'or by a subsequent Will registered under Part IX of Regulation I of 1070' at the end of each of the two clauses.

Mr. Ramier.—I accept the amendment.

Seconded by Mr. Thanu Pillai.

Carried.

Mr. Ramier.—I would further propose that a new section be added after section 11 as follows:—

"No will other than those provided for by the last preceding section shall be revoked otherwise than as provided by section 16, or by any other Will or Codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a Will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same."

Sections 17 and 18 which are now converted into clauses (*a*) and (*b*) of section 17 deal only with the revocation of registered and deposited Wills. A provision is necessary for the revocation of Wills neither registered nor deposited, as, indeed, such Wills are made valid under the Bill as now settled by the Council in Committee. The proposed section is a close adaptation of section 57 of the Indian Succession Act.

Seconded by Mr. Thanu Pillai.

Carried.

Section 22.

Mr. Thanu Pillai.—I have to move a small amendment in this section—that the last sentence of the main section—'And nothing.....succession'—be dropped. No such separate saving clause appears called for. Its retention is likely to throw doubt on the import and scope of the main provisions.

Seconded by Mr. Ramier.

Carried.

Mr. Ramier.—I would also move that the word 'personal' in line 5 be omitted. It seems hardly necessary.

Seconded by Mr. Thanu Pillai.

Carried.

Section 23.

Mr. Ramier.—I have only one amendment more. I propose that section 23 be omitted and the following be substituted:—

"This Regulation shall apply to the testamentary disposition of immovable

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property situate in Travancore and the movable property of a person who shall have at the time of his death his domicile in Travancore."

I have, Sir, very serious doubts in retaining section 23 as it is. The *extent* of testamentary power is, I think, fully dealt with by the various provisions in Part II. What is wanted to be further provided for is the scope of this Regulation. With that object, I beg to lay before you the section that I have just proposed. It says the Regulation shall apply to all testamentary disposition of immovable property situated in Travancore, whether the testator is a Travancorean or a foreigner. To this, I believe, nobody has any objection. Indeed, it was so resolved by the Council in Committee. The next thing that is provided for by the section is that, as far as movable property is concerned, this Regulation shall apply only if the testator had, at the time of his death, his domicile in Travancore. This principle is simply an adaptation of the principle contained in the Indian Succession Act and, I believe, this is the received principle of jurisprudence. Probably, an objection may be taken to the new section in that the law of domicile is not defined in this Bill. For my own part, I should have gladly adopted the few sections of the Indian Succession Act (Sections 7 to 19) in reference to domicile; but I am willing to leave that to be decided by the general principles of the law of domicile, as the Council has resolved already to leave the interpretation and construction of Wills unprovided for in this Bill.

Mr. Thanu Pillai.—I second the amendment. The section proposed to be omitted exempts persons who now possess testamentary power from the limitations as to the extent of such power imposed by this Bill. These limitations, it will be observed, apply only to Hindus, the Christians being allowed full power and the Mahomedans what power they possess under the Mahomedan law. As regards Hindus, the existing case-law (there is, of course, no statutory law on the subject) is that Hindus who are Travancoreans have no testamentary power, while foreign Hindus who have migrated into and settled in Travancore, whether permanently or temporarily, retain the testamentary power which they possessed in their native land. The foundation of the latter decision is the maxim that a Hindu carries his "personal law" with him wherever he may go. This maxim or principle admits of no doubt and we are bound to accept it. The question is what is the real import of the expression "personal law". In the view of jurists, the personal law of an individual means the body of civil law by which the civil society of which he is a member, is governed. The civil society need not necessarily be territorial. "Within Christendom" says Westlake "every person is a member of that civil society in the territory of which he is domiciled; in the East, every person is a member of that civil society existing in the territory in which he is domiciled, which his race, political nationality or religion determines." In the former case, the personal law of an individual is the territorial law of his domicile; in the latter, the law of the tribe or race to which he belongs irrespective of *place*. The first is the law of a *state*, the second, the law of a *people*. The one contains the commands issued by a territorial sovereign; the other, the Rules which in the words of Demosthenes "are the gift of the Gods and the discovery of sages." "The laws which Hindus and Mahomedans obey, do not recognise territorial limits. The Shastras and the Kuran revealed religion and law to distinct peoples each of which recognised a common faith as the only bond of union." (Tagore Lectures—1870). "The British Courts" says Holland, "in dealing with members of the Hindu and Mahomedan communities, held that wherever such persons go within the limits of British territory, they carry with them, as a personal law applicable to their family and possessions, Hindu or Mahomedan law respectively."

I trust it will be clear from the foregoing extracts that the personal law which a Hindu is said to carry with him wherever he goes is the law of the Shastras—the Dayabhaga in Bengal, the Mithakshara in Madras, the Vyavahara Mayukha in Bombay and so on. It may be noted in passing that the ubiquity of 'personal law' even in this sense will be recognized only within British territory. Now, is the law relating to testamentary disposition of property a part of the Hindu law? I cannot better answer this than in the words of the learned Chief Justice in Ramalingom Pillai *vs.* Chithambakumaru Balasubramonia Pillai:—"I may state without fear of contradiction that the original authority—I mean the Smrithies and their commentaries—are silent upon the testamentary powers of a Hindu." Mr. Mayne says—"It is admitted that the idea of a will is wholly unknown to Hindu law, and that the native languages do not even possess a word to express the idea." Mr. Stephen says—"It (i. e. the Hindu law) is a system so unfavourable to testamentary power of any kind..... Whatever the precise origin of Hindu Wills may have been, it is an admitted

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fact that they are of very modern origin. My own opinion is that they came into use after the establishment of British rule in Hindustan." The law of Wills may thus be said to be not only not a part of the Hindu law, but opposed to the true spirit of the Hindu Shastras; and it is no more a personal law of the Hindus than the law of contracts or any other branch of civil law promulgated by the British Indian Legislature. It will not, I fancy, be contended that the principle that a Hindu carries his personal law wherever he goes, applies to the whole corpus of civil laws to which he is subject in British India. The law relating to wills among Hindus, whether statutory or judge-made, is, therefore, a *territorial* law and no extra-territoriality can be claimed for such a law beyond what would be conceded under the well-known principle of "*jus domicilii*." To admit any other principle would be to submit ourselves *pro tanto* to a foreign jurisdiction. Suppose a man comes from Ceylon and settles here permanently having abandoned all intention of returning to his native land. According to the section as it stands, he will be governed for all time, so far as the extent of his testamentary power is concerned, by the law of Ceylon. There are hundreds, perhaps thousands, of families who originally came from British India, Ceylon and other foreign territories and have settled here with no intention whatever of returning to their original country. Such immigration and settlement have gone on for years and will of course continue. These men do not generally retain their foreign characteristics, but have incorporated themselves with the people and enjoy and claim all the privileges of Travancore citizenship. To concede to these men, the personal status according to the *territorial* law of their original country, would, in the words of Wharton, "not merely destroy business confidence by making it difficult for them to know whom to trust, but would establish in innumerable sections a foreign, uncongenial jurisprudence." "If any one" to quote another eminent authority (Westlake) "wished to settle in a country in the sense of establishing himself there with all his belongings so as to become a member of its society, and found a family there, if any where, and at the same time to retain the law of another country, he would be wishing for incompatible things." If a Travancore Hindu goes and establishes himself permanently in Ceylon or British India, he will not be governed by the Travancore law so far as the testamentary disposition of his movables is concerned. My contention is that no differential treatment should be accorded to a non-Travancore Hindu who chooses to acquire a Travancore domicile. Even on considerations of general policy, the section in question should be omitted. "In all matters of distinctive policy" says Wharton "each state will apply to property within its territory, the condition which its own policy exacts." Following the spirit of the Dharma Shastras which do not countenance testamentary disposition of property and which regard the family as the owner and the father or the Karanavan, the mere manager of property, the Council has resolved to limit the extent of testamentary power to one-half of what is allowed by the law in British India and Ceylon. Why should not this, from the point of view of every orthodox Hindu, wholesome limitation, be applied to all Hindus who are permanently settled in the country? Neither juridical, nor, so to speak, national or religious considerations favour the proposed exemption.

If the testamentary power of the Hindus is considered a part of their personal law, the section as it now stands involves, so far as immovable property is concerned, an infringement of the well-recognized principle that in India there is no *lex loci* and that the personal law governs all matters relating to property, movable and immovable. In other words, even Hindus, in spite of their so-called distinctive, comprehensive personal law, are to be treated exactly on the same footing as all other non-Travancoreans in respect of immovable property under the general principle of *lex loci rei sitæ*. The amendment proposed merely seeks to extend the restriction which has been accepted in respect of immovable property to the movable property of persons who have acquired a Travancore domicile. The law of their native country will, of course, apply to all who retain their foreign domicile.

It may perhaps be said we have no law of domicile. My answer is we have no law of contracts, no law of torts, no law of evidence. But our Courts have been administering those laws all these years, taking, of course, as their guide the general principles which have been accepted and acted upon in British India. The difficulty which the Courts would experience in settling questions of domicile will not, I think, be greater than in deciding whether particular individuals come under the exception. Almost every Makkathayee and many of the Marumakkathayees too may be said to have, at one time or other, come from British India, Ceylon and other foreign territories. As neither duration of residence nor clear intention to permanently

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settle here alters the status of a Hindu, it will be open to every man who came into the country in the first century of the Christian era to contend that he should be governed by the law of his original abode.

Mr. Krishnaswamy Rao.—I oppose the motion. The Select Committee inserted (see section 18 in their Bill) a provision saving the testamentary powers possessed by any class of persons at the date this Bill becomes law. This was done in deference to the decision of the local High Court in S. A. No. 279 of 1069 (XI Travancore Law Reports, page 109) in which it was ruled that the Hindus who migrated and settled in Travancore were competent to will away the property which they could give away *inter vivos*, if the law by which they were governed before such emigration and settlement, allowed them to do so. The reasons for the ruling will be found in the following passage in Mayne's Hindu Law and Usage (para 45) which is supported by many high authorities:—

"As regards those who profess submission to the Hindu Law as a whole, questions of usage arise, *first*, with a view to determine the particular principles of that law by which they should be governed; and, *secondly*, to determine the validity of any *local*, *tribal* or *family* exceptions to that law. *Prima facie*, any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognised in that province. He would be governed by the Daya Bhaga in Bengal; by the Vivada Chintamani in North Behar and Tirhut; by the Mayukha in Guzerat; and generally by the Mitakshara elsewhere. *But this law is not merely a local law. It becomes the personal law, and a part of the status of every family which is governed by it.* Consequently, where any such family migrates to another province, governed by another law, *it carries its own law with it.* For instance, a family migrating from a part of India where the Mitakshara, or the Mithila system prevailed, to Bengal, would not come under the Bengal law from the mere fact of its having taken Bengal as its domicile. And this rule would apply as much to matters of succession *to land as to the purely personal relations of the members of the family*. In this respect the rule seems an exception to the usual principles, that the *lex loci* governs matters relating to land, and that the law of the domicile governs personal relations. The reason is, that *in India, there is no lex loci, every person being governed by the law of his personal status.* The same rule as above would apply to any family which, by local usage, had acquired any special custom of succession or the like, peculiar to itself, though differing from that either of its original, or acquired, domicile."

Mr. Ramier proposed an amendment similar to the one now moved by him and seconded by Mr. Thanu Pillai, when the Council considered the Bill in Committee and it was decided that in the matter of immovable property, the Hindus settled in this country, must follow the provisions of this Bill when it becomes law, leaving the testamentary disposition of movable property to the personal law of the testator. The present motion seeks to curtail the testamentary powers now possessed by Hindus settled in this country, even as regards movable property, for which there is no precedent. The law of India has been, as pointed out by Mr. Mayne in the passage above quoted, that a Hindu carries his personal law of property wherever he goes, unless he himself adopts the law of the country in which he settles. Not only in British India but also in Travancore, the Courts decide the rights of a Bengalee according to the Daya Bhaga, of a Maharatta or Guzerati according to the Mayukha, of a Tamilian according to the Mitakshara and of a Malayali according to Marumakkathayam usages. One of our friends here observed that the term personal law cannot include "judge-made law" or the statutory law under which the alien Hindu acquired his testamentary power. We cannot have a stronger proof of 'judge-made' law forming part of a personal law, than the fact that the Dayabhaga, Mayukha and Mitakshara are authoritative interpretations of Smrithis, as the judgments of the courts are. When even *family customs* long observed, become part of the personal law, it is too much to say that the statutory law which gives rise to new usages, could not become part of the personal law. The present motion is *unprecedented* in legislation in British India, and against the universally recognised principle of the Indian jurisprudence, that a man carries his own personal law of property with him wherever he goes. The use of the word "domicile" in the motion, will, I fear, bring in all manner of new complications and intricacies in the administration of Hindu law in Travancore. Our courts are not now bothered with questions of domicile, as they have simply to decide civil rights with reference to the personal law of the parties. The British Indian Legislature did not apply the sections of the Indian succession Act, relating to domicile to the Hindus (see the Hindu Wills

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Act No. XXI of 1870), for the simple reason that the Hindus, unlike the classes for whose benefit the Succession Act was passed, had a personal law of property which they carried wherever they went. In the case of a Hindu who comes to Travancore from Madras and acquires house and other property in Travancore, while retaining the property he possessed in British India before his settlement here, and has relations and business in both the places, it will be impossible to say that he domiciled in Travancore. None can have more than one domicile (section 6 of Act X of 1865, Dr. Ormsby on Domicile, Page 10). Will our law govern his movable property in British India—the place of his original domicile? According to the spirit of the present motion the law administered in Madras should not apply to his movable property in Travancore. That the Council in Committee resolved to apply to the bequest by alien Hindus, of immovable property situated in Travancore, the limitations imposed by this Bill, is no argument for their extension to *movables*. The decrees of our Courts in so far as they relate to the real property in this country, are executed here, while the same cannot be said of movables (part of which if not the whole) may be investments with bankers in British India or Government securities at the time of execution. The application of two systems of law to the movable property of one and the same person will not only be most inconvenient but also lead to complications in the execution of decrees under the reciprocal arrangements. Even the professed object of the motion, viz., that the law applicable to the wills made by Hindus as regards their property in Travancore, should be uniform, will not be secured, for it only seeks to bring in the *domiciled* Hindus within the limitations of the proposed law. There will be a very large number of Hindus in the country who retain their foreign domicile, to whom the proposed law will not apply. In the absence of a clear statutory provision similar to section 11 of the Indian Succession Act, it is not easy to determine whether any particular individual has given up his original domicile and acquired a new one. I strongly object to the virtual repeal which the motion before the Council implies, of the universal principle of the Indian Jurisprudence that each man carries his personal law of property wherever he goes and settles.

Mr. Ramier.—Sir—In view of the strong opposition of the learned member in charge of the Bill to the amendment proposed, I think it is due to myself to say a few words in explanation as to why I still retain the same views in reference to this matter. In the first place, let us see what is the real difference between us who are for the amendment and those who oppose it. As has been already pointed out, the whole controversy relates only to the *extent* of the testamentary power of the Hindus and not of any other class. The Council has resolved that *that extent* in reference to the power of the Travancore Hindus should be a limited one. In coming to this decision, the Council has not chosen to follow the precedent of the British Indian Legislature which has recognised the testamentary power of a Hindu (in cases where the Hindu Wills Act applies) to a full extent to which a gift *inter vivos* may be made. The reason for this deviation is that the Hindu Law as laid down by the Dharma Sastras did not contemplate Wills or posthumous disposition of property, that the orgin and growth of making Wills in British India itself is of a recent date, that such dispositions of property have not been recognised by judicial decisions in Travancore and that though it is deemed necessary to enable the Travancore Hindu to make testamentary dispositions of property, the power should be restricted in case the testator leaves behind him his near heirs. Again, the Council is unanimous that in the case of a Hindu who is not a Travancorean his testamentary power in reference to immovable property in Travancore must be subject to the same limitations as in the case of a Travancore Hindu on the principle of *lex loci rei sitæ*. It is conceded that here the *personal law* or what may be strictly called the *law of the personal status* of the testator is not to apply. Then comes the point of difference. We say that the same limitations ought to apply in the case of testamentary disposition of movable property in Travancore of those Hindus who become Travancoreans by the acquisition of domicile there. The learned member says that this is opposed to the universally recognised principle of the Indian jurisprudence that a man carries his own law of property wherever he goes, and that every Hindu who comes and settles in Travancore must be allowed to a full extent his testamentary power in reference to movable property. In support of this proposition Mayne on Hindu Law is quoted. Mr. Mayne's observations relate to the law of succession and like matters dealt with by Hindu Law. We now consider a question in regard to Wills which on all hands is admitted as not being contemplated by the Hindu Law at all. Hence I doubt the applicability of the authority quoted. Further, if there is no objection as regards curtailing the testamentary power of a foreigir Hindu in reference to landed property, I could not see why

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there should be such an objection in reference to movable property alone, while the Hindu Law quoted applies equally to immovable as well as movable property. It is pointed out that the professed object of the motion is to make the law uniform as regards the power of Hindus in reference to their property in Travancore and even that object cannot be gained because the amendment brings only the domiciled Hindus within its scope. The object of the amendment is not to have any uniformity of law *for all Hindus* who have property in Travancore but *for all Travancore Hindus* whether they have become Travancoreans at a recent date or a remote date. If we have not this uniformity, I am afraid the practical working of the law would be a very serious difficulty. As has been pointed out by our friend Mr. Thanu Pillai, most of the Hindu families in the country whether Makkathayees or Marumakkathayees have been settlers in Travancore and it is only a question of when it was they so settled. Are our courts then to determine in each case when such a family came in the country and whether they brought with them any personal law as regards the right of testamentary disposition, in every case a Will of a Hindu in Travancore is brought before them? Are the difficulties anticipated in deciding the question of domicile in the case of a few persons who would be admitted to have been foreign residents but who would be alleged to have acquired a domicile in Travancore, anything compared with the difficulties that may arise in deciding the period of settlement in Travancore and the carrying of the personal law at the time of such settlement. To have one law to a Hindu who has recently settled in the country and another law to one who has settled in the country some years back, though both of them may have so intermingled themselves as to be considered even as members of one family, appears to me not quite sound in principle. In the proposed amendment, I have before me the clearly recognised distinction that the *lex loci* ought to govern matters relating to landed property while the law of domicile should govern the movable property of an individual and this principle I still contend is not in violation of any recognised principle of Hindu Law for the simple reason that the Hindu Law is no authority for matters relating to Wills. Some difficulties are suggested in deciding as to the question of domicile referred to in the section. If really general principles of the law of domicile are not sufficient to decide such questions that will be an argument only for making a provision to define the law of domicile. If the Hindu Wills Act has not adopted the provisions (referring to Domicile) of the Indian Succession Act, it was simply because there was no necessity for it as the Legislature there did not intend to make a distinction in the power of testamentary disposition of Hindus of one place from that of the Hindus of another place. Why should this difficulty be anticipated in the case of Hindus alone? In the case of non-Hindus, such as Christians and others, is it not necessary to enact that in case of movable property in Travancore this law will apply if a domicile has been acquired in Travancore? For, if not, no other law will apply to them because we cannot say that they have a law of their personal status other than that based upon the Law of domicile. These are my reasons, Sir, why I feel bound to adhere, with all deference to those that oppose me, to the position I have taken in this matter.

After some further discussion, the motion was carried by the casting vote of the President—Messrs. Krishnaswamy Rao, Sankara Menon and Prince voting against it.

Mr. Krishnaswamy Rao.—Considering the importance of many amendments made by the Council in Committee to-day, I think it highly desirable that the Bill as it now stands, should be published for the information of the public; and that the final reading of the Bill should be postponed to the next ordinary meeting.

I move accordingly.

The motion was put and agreed to.

The Council adjourned at 5-50 P. M.

SHUNGRASOOBYER,
President.

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